

Number: WG22945



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

White Paper

Collection and management of devolved taxes in Wales



Date of issue: 23 September 2014

Action required: Responses by 15 December 2014

Overview

This consultation seeks views on proposals for the collection and management of devolved taxes in Wales.

How to respond

Responses to this consultation should be submitted to arrive by **15 December 2014** at the latest.

Responses can be submitted either:

electronically via the online form:

<https://secure.wales.gov.uk/consultations/forms/devolved-taxes/?lang=en>

E-mailed to:

FinancialReformMailbox@wales.gsi.gov.uk

(please enter 'Collection and management of devolved taxes in Wales' in the subject matter box).

Or, posted to:

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at:

www.wales.gov.uk/consultations

Details of the Commission on Devolution in Wales (Silk Commission) first report, the UK Government's response to the first report and the Wales Bill can be accessed from the Welsh Government's website at:

<http://wales.gov.uk/funding/financereform/?lang=en>

Contact details

For further information:

David Thurlow
Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

E-mail:

FinancialReformMailbox@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

Foreword

	Page
Chapter 1: Introduction and policy background	1
Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority/Awdurdod Cyllid Cymru	8
Chapter 3: Powers and duties	17
Chapter 4: Encouraging tax compliance	22
Chapter 5: Addressing tax avoidance	28
Chapter 6: Resolving tax disputes	33
 Appendix 1: Consultation response form, including summary of consultation questions	
 Appendix 2: Glossary of terms	
 Appendix 3: Draft Regulatory/Equality/Privacy Impact Assessment	

Foreword by the Minister for Finance and Government Business



The Wales Bill currently before the Westminster Parliament sets out new fiscal powers for Wales, including powers to borrow for capital investment and powers in relation to taxation. The Bill is currently in the House of Lords and is expected to secure Royal Assent before the end of the year. The devolution of new borrowing and tax powers is a significant step forward and provides us with an opportunity to develop funding arrangements that are better suited to Welsh circumstances and priorities.

Next year we will bring forward an Assembly Bill that sets out our proposals for tax administration in Wales. This will be the first Welsh tax legislation in modern times and in developing our proposals, I am seeking the widest possible range of views starting with this White Paper. We will consult further on the key options for specific Welsh taxes to replace Stamp Duty Land Tax and Landfill Tax next spring.

I have previously set out my tax principles. The taxes we develop will: be fair to businesses and individuals who pay them; be simple, with clear rules which seek to minimise compliance and administration costs; support growth and jobs that in turn will help tackle poverty; and, provide stability and certainty for tax payers.

We will introduce legislation that reflects these principles and provides a clear and strong tax governance framework, starting with the establishment of the Welsh Revenue Authority/Awdurdod Cyllid Cymru. The Authority will have the responsibility for tax collection and management of Welsh devolved taxes, however, it will not necessarily undertake all aspects of tax administration itself. I am considering a range of options for how this important function could be undertaken and responses to this consultation will help inform future decision making.

Most people voluntarily pay any taxes that are due and recognise that our public services are dependent upon such funding. We will make the payment of devolved taxes as easy as possible. There is however a minority of people who attempt to evade paying tax - which is illegal - and those who seek to avoid paying tax. Tax evasion and avoidance can give people an unfair advantage over those who pay tax and reduces the amount of money available to fund public services. This is unacceptable and we will establish robust arrangements to prevent this from happening. This consultation therefore seeks views on actions that might be taken to promote and encourage tax compliance and tackle non-compliance.

This first step in the devolution of taxes to Wales is both historic and significant and I encourage people and organisations to offer their views and engage with us to help shape the development of a Welsh tax regime.

Jane Hutt

Minister for Finance and Government Business

September 2014

Chapter 1: Introduction and policy background

INTRODUCTION

1.1 The UK Government is devolving new financial responsibilities to Wales that will provide the Welsh Government with the powers to borrow for investment in strategic capital infrastructure projects and powers in relation to taxation.

1.2 In preparing for these new responsibilities we are consulting widely with stakeholders over the coming 6-8 months. This White Paper is the first of three consultations that we will undertake. Further consultations concerning proposals for Welsh taxes to replace Stamp Duty Land Tax (SDLT) and Landfill Tax (LFT) will follow in the spring of next year.

1.3 From April 2018 Wales will need to have a fully-functioning, efficient and effective regime for collecting and managing the two new Welsh taxes. The Welsh Government has decided to bring forward legislation on tax collection and management first, in particular to provide sufficient time after the passage of any legislation to implement and establish an effective tax regime. A bill on these arrangements is due to be introduced to the Assembly in summer 2015.

1.4 This White Paper considers the options and opportunities for the policy and subsequent legislation on the collection and management of future Welsh taxes. There may well be opportunities for further devolution and rationalisation of tax collection functions in Wales, and thus it is important to ensure that any tax collection and management regime put in place now is as flexible and cost-effective as possible to cater for future possibilities.

1.5 The Welsh Government recognise that the operational priorities and processes of a tax collection and management regime can only be understood, and indeed be developed, with some clarity about the taxes that they are seeking to collect. As such, the publication of consultation documents on the key options for Welsh taxes to replace SDLT and LFT in spring 2015 will provide context for the first bill on tax collection and management. It will be for the next Welsh Government to take forward legislation on these replacement taxes in time for implementation in April 2018.

1.6 In considering this White Paper and future White Papers, it is important to set out the wider policy context that has led to the devolution of new financial powers to Wales.

BACKGROUND

1.7 The Welsh Government established an independent Commission to consider funding and finance for Wales (the Holtham Commission) in 2008. The Commission's reports published in July 2009 and 2010, demonstrated how a needs-based alternative to the funding formula for Wales could be made to work in practice, and also proposed the devolution of limited tax-varying and borrowing powers to Wales.

1.8 In light of the Holtham Commission's recommendations on fairer funding, the Welsh and UK Governments have jointly committed to review Welsh funding levels as part of each Spending Review. If relative funding levels are forecast to decline, both Governments have agreed to discuss options to address the issue in a fair and affordable manner.

Commission on Devolution in Wales (The Silk Commission) and the UK Government's response

1.9 In October 2011, the UK Government established the Commission on Devolution in Wales, chaired by Paul Silk, to review financial and constitutional arrangements in Wales. The Commission's first report, addressing the devolution of fiscal powers, included 33 recommendations and was published on 19 November 2012. The Welsh Government welcomed the report and all parties in the Assembly called for its full implementation.

1.10 The UK Government published its full response to the first Silk report on 18 November 2013 and accepted 29 of the 31 recommendations that were directed at the UK Government and in doing so agreed a package of measures, including:

- i) the full devolution of non-domestic rates (NDR). At present, NDR receipts contribute to the financing of the Welsh DEL budget¹, but do not affect the overall expenditure limit. Under 'full devolution', the revenue raised in Wales will directly affect the level of funding available to the Welsh Government. In addition, the policy position will be clarified and Welsh Ministers will gain additional flexibility to set policy in line with Welsh circumstances;
- ii) the full devolution of SDLT and LfT. This will enable the Assembly to legislate for new Welsh taxes to replace the current stamp duty land tax and landfill tax;
- iii) the power to borrow for infrastructure investment. This will be introduced alongside the devolution of taxes, which provide an independent revenue stream to support borrowing costs;

¹ DEL Departmental Expenditure Limit – the multi-year budget limit for Wales set by HM Treasury

- iv) the provision of additional borrowing to manage cash flow, to be introduced alongside tax devolution in order to manage volatility in tax revenue;
- v) the scope for the Assembly to create new taxes, subject to agreement by the UK Government on a case-by-case basis;
- vi) the partial devolution of income tax. This is conditional upon endorsement by the people of Wales in a referendum (the initiation of such a referendum would require two-thirds of Assembly Members to vote for a referendum). If devolved (see also paragraphs 1.17-1.18), this power would enable the Welsh Government to vary income tax rates by up to 10p; and,
- viii) the intention to pass UK legislation to implement the changes outlined in this White Paper before the 2015 general election.

The Wales Bill

1.11 The UK Government published the Wales Bill in March 2014 and current expectation is that it will receive Royal Assent before the end of 2014. The Bill makes provision for a number of matters, but specifically provides detail about the arrangements for borrowing. It includes powers to borrow up to a ceiling of £500 million for capital investment projects and £500 million of revenue to help manage short-term budgetary volatility arising from tax devolution.

1.12 The UK Government has committed to reviewing the capital borrowing limit during Spending Reviews. In advance of implementing the Welsh Government's new borrowing powers in April 2018, the UK Government has also agreed that the Welsh Government can use its existing, more limited, borrowing powers to proceed with improvements to the M4 (should it choose to do so).

1.13 The Wales Bill also provides powers to create new devolved taxes on a case-by-case basis; the partial devolution of income tax (if supported by the people of Wales in a referendum); the legislative framework for SDLT and LfT to cease to operate in Wales; and, it will confer legislative competence to enable the Assembly to legislate for a Welsh Tax on Transactions involving interests in Land and Welsh Landfill Tax and arrange for their collection and management.

1.14 The accompanying Command Paper to the Wales Bill confirmed the UK Government's intended timetable: to fully devolve NDR by April 2015; devolution of SDLT and LfT being scheduled for April 2018; and, the timing of any referendum on the partial devolution of income tax being a matter for the Assembly.

1.15 The Wales Bill provides the Assembly with the competence to undertake ancillary activity associated with Welsh taxes: specifically, the ability to undertake their collection and management. It also enables Her Majesty's Revenue and Customs (HMRC) - the existing body responsible for tax collection and management - to undertake this role for Wales, but it does not *require* HMRC to have a future role here.

IMPLICATIONS OF THE WALES BILL

1.16 This is an important development as it is the first time that the Welsh Government will have had tax-raising powers. Welsh Ministers will now be able to use these powers to respond to Welsh needs and priorities. The devolution of these taxes is also closely linked with the Welsh Government's new ability to borrow to fund infrastructure investment. This long called-for effective power, brings an additional level of accountability that links revenue-raising powers in Wales to the outcomes achieved with their expenditure.

1.17 The scope for the partial devolution of income tax is conditional upon endorsement by the people of Wales in a referendum and therefore it is not the subject of this consultation. Nevertheless, it should be noted that the Welsh Government maintains that any future devolution of income tax is linked to the need for Welsh block grant reform and the method for determining the grant should be put on a fairer and sustainable footing before introducing such a major reform.

1.18 The Welsh Government's view is consistent with the Silk Commission's key recommendation that said the transfer of powers should be conditional upon resolving the issue of fair funding in a way that was first agreed by both the Welsh and UK Governments. Progress has been made towards funding reform with both Governments having set out a process in a joint statement to achieve a sustainable arrangement for Welsh devolved funding and the UK public finances, that each can accept as being fair and affordable². It is however too soon to say whether this progress will deliver the reform being sought.

The limits to what the Assembly and the Welsh Ministers can do with tax raising powers

1.19 The Assembly has competence to legislate for SDLT and LfT replacement taxes - a Welsh Tax on Transactions involving interests in Land (TTiiL) and a Welsh Landfill Tax (WLfT). This clearly frames and constrains the policy options with regard to replacement taxes.

1.20 The Welsh Ministers could choose not to replicate SDLT or LfT. However, the UK Government will reduce the block grant allocation to Wales to reflect the possible revenue from SDLT and LfT. Not developing successor

² Funding reform: joint statement of progress, HM Government and Welsh Government, October 2012

taxes would have a negative net impact on the Welsh Government's budget, and this would impact on the Government's ability to deliver public services and wider priorities. The wider link with the ability to borrow would also be lost. Table 1 shows the revenue from SDLT and LfT in recent years.

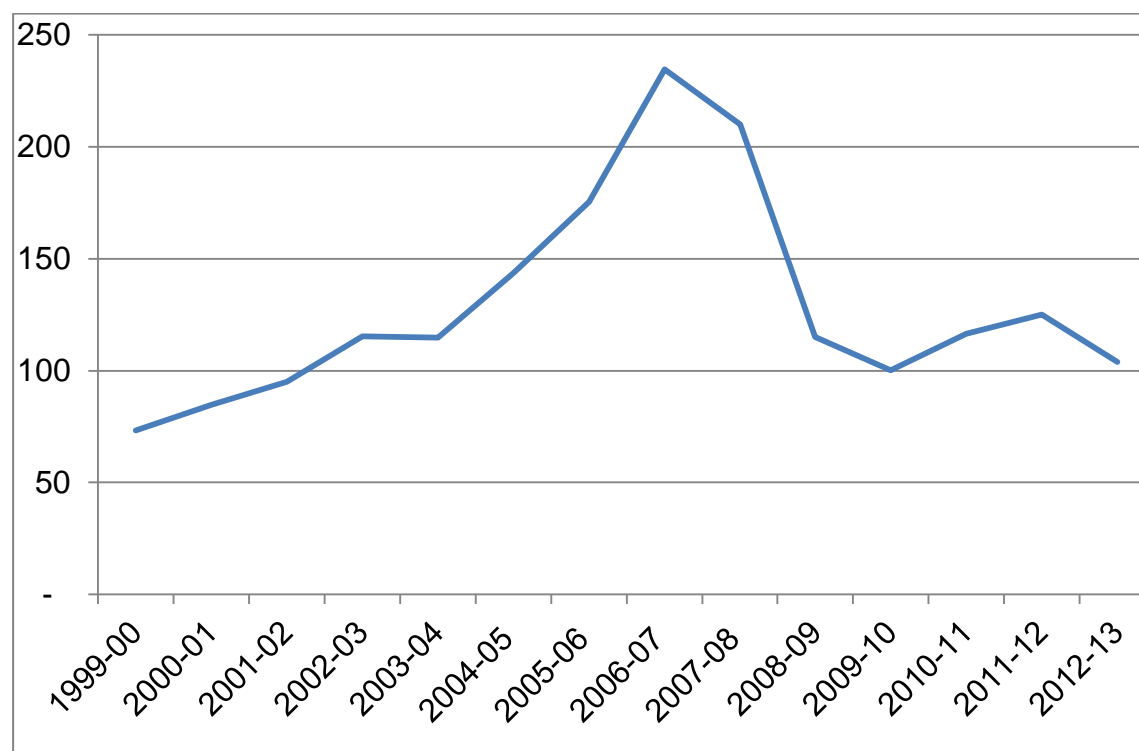
Table 1: Revenue from SDLT and LfT in Wales, 2006-07 to 2012-13

£m	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
SDLT*	235	210	115	100	115	125	105
LfT^	40	38	43	40	48	49	50

Source: *HMRC Stamp Tax Statistics; ^HMRC Disaggregated Tax and NICs Receipts

1.21 At UK level, LfT rates have increased recently to incentivise diversion of waste from landfill, and the success of this policy is likely to lead to reducing landfill tax revenues over future years. Figure 1 shows that SDLT is highly cyclical as it is based on the volume and value of property transactions, which are both closely related to the performance of the wider economy.

Figure 1: SDLT receipts in Wales, 1999-00 to 2012-13 (£m)



Source: HMRC Stamp Tax Statistics and HMRC Disaggregated Tax and NICs Receipts

The requirements associated with using tax raising powers

1.22 The decision to introduce replacement taxes also requires the Assembly to legislate to introduce tax administration powers to enable the collection and management of the Welsh devolved taxes.

1.23 Tax devolution does not increase the funding available to the Welsh Government. Assuming equal tax effort (ie no significant change in the level of tax borne in Wales), the yield from Welsh taxes in the first year will be offset by a reduction in the Welsh Government's block grant allocation equivalent to the level of revenue expected from SDLT and LfT. Discussions concerning the methodology for adjusting the Welsh block grant to account for tax devolution are continuing..

1.24 There will be costs associated with:

- the cessation of the current SDLT and LfT in Wales (the cessation of these taxes in Scotland is estimated by HMRC to cost around £1million³);
- implementing new Welsh taxes; and,
- collecting and managing Welsh taxes over and above the costs of administering the existing SDLT and LfT regimes in Wales.

1.25 The Wales Bill Command Paper states that:

“Any additional costs associated with the devolution of SDLT and LfT (net of savings to the UK Government arising from the fact that those taxes will no longer be collected or administered in Wales) will be borne by the Welsh Government. The UK Government will work constructively with the Welsh Government to minimise any such costs.”

1.26 The Welsh Government has consistently stated that the devolution of SDLT and LfT to Wales should be accompanied by a budgetary transfer to help meet the costs of administering the replacement taxes. Discussions on this are on-going.

SCOPE OF CONSULTATION ON TAX COLLECTION AND MANAGEMENT

1.27 The development of a tax collection and management regime in Wales will need to be closely linked with the development of the two new replacement Welsh taxes. Some collection and management arrangements are generic to both (and potentially other, future) Welsh taxes, and some are specific to the individual taxes and indeed dependent on the arrangements for the tax itself (for example, the specific arrangements around internal review and appeal).

³ Scottish Government Second Annual Report on the Implementation and Operation of Part 3 (Financial Provisions) of the Scotland Act 2012

1.28 The generic powers, duties and processes associated with tax collection and management will need to mesh closely with the particulars of TTiiL and WLfT operation. This consultation provides as much detail as possible on powers and duties and gives examples of how they might operate, recognising that not all the issues raised in this consultation will be taken forward in the legislation on tax collection and management. Further detail will feature in subsequent tax-specific legislation, or wider policy operational proposals, as appropriate.

Exploring policy options: tax authority comparators

1.29 In developing our policy and to help us set standards for how a tax authority might be established and operate, the Welsh Government has looked at the experience of HMRC and Scotland as comparators, together with consideration of wider international best practice.

1.30 The Scotland Act 2012 provided devolution of certain tax powers to Scotland from April 2015. The similarity in the Wales Bill and the Scotland Act in terms of the devolution of smaller taxes makes Scotland a useful comparator for a Welsh approach to tax devolution. Key differences include the devolved settlement in Scotland compared to Wales, and the possible next steps of devolution.

1.31 In Wales, HMRC's processes and procedures are commonly understood by taxpayers and their agents and Welsh taxpayers will continue to pay tax to HMRC for non-devolved taxes. Also, many individuals and businesses work across the England-Wales border. As such, HMRC is a useful comparator for the purposes of developing a Welsh approach to taxation, with particular reference to processes and procedures.

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority/Awdurdod Cyllid Cymru

INTRODUCTION

2.1 Alongside the development of Welsh taxes, arrangements also need to be made for their subsequent collection and management. It is necessary for the Assembly to legislate for powers to be able to do this and for the powers to be vested either in individuals or conferred in an appropriate corporate body.

2.2 The individuals or corporate body holding the powers will have ultimate responsibility for the operation of the powers in furtherance of their duties. The powers include those for information gathering and investigation, penalties and fines, civil and criminal enforcement, and, importantly, appeal rights and administrative justice. Further details are set out in Chapter 3.

2.3 In establishing a tax administrative function for Wales, consideration has been given to the following:

- the holding of information about individual taxpayers' affairs which should be protected in its own right;
- the setting of criteria for penalties and appeals, and ultimately the ability to be able to take individuals and businesses to court for the non-payment of tax, based on those criteria and internal decisions;
- the distinction from other parts of Government which administer payments and the collection of money from taxpayers; and,
- the use of powers to require payment and require information, to enforce demands for payment.

2.4 For all these reasons, the individual or corporate body undertaking the collection and management of taxes should be operationally separate from Government Ministers – an approach that is consistent with international best practice⁴.

2.5 The tax administration function is also a specialist role. Tax collection and management is highly technical, both in understanding legislative tax structures, but also operating procedures which are amenable to the efficient and effective collection of those taxes, and working across different taxes to understand the potential for improving compliance and dealing with avoidance.

⁴ [Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies](#)

2.6 The UK Government has vested powers of tax collection and management in HMRC Commissioners and the Scottish Government plans to vest powers in a legally-constituted specialist tax authority (Revenue Scotland). Both these approaches enable operational matters to be separate from Ministers.

2.7 The Welsh Government has considered potential options for Wales including vesting the tax powers with the Welsh Ministers, vesting them in commissioners or vesting them in a legally-constituted public body. The last of these options is a familiar, well-tested and widely-used public service model in Wales, its most recent use being in relation to Natural Resources Wales. Such bodies are established with a Board structure, have a Chief Executive and legal powers vested in the body.

2.8 The Welsh Government proposes that powers of tax collection and management should be vested in a new legally-constituted public body, to be known as the Welsh Revenue Authority (WRA). The adoption of such a model for tax administration is consistent with international best practice.

2.9 The Welsh Government proposes that WRA should be operationally separate from the Welsh Ministers, but will not be fully independent of them. Tax collection is a function of government: the revenues collected will go into the Welsh Consolidated Fund to support public services in Wales, and the Welsh Ministers will wish to give strategic direction as to the priority they place on tax collection (and related functions, for example, the emphasis they wish to place on compliance and avoidance). WRA will not be holding the Welsh Government to account, and indeed its main role is to implement the tax policies and priorities as set by the Welsh Government.

2.10 As with HMRC and Revenue Scotland, the Welsh Government proposes that WRA should be a Non-Ministerial Department⁵. This status confers the appropriate separation from Welsh Ministers, particularly in that the organisation will be directly accountable to the Assembly for its performance. Given its role in revenue collection, there need to be clear lines of accountability and clear independence from political involvement. It will also have its own Accounting Officer to oversee the use of its funds in the implementation of tax policy.

2.11 The approach also provides the significant advantage that staff will be civil servants bound by the Civil Service code (the staff of Non-Departmental Public Bodies, such as those of Natural Resources Wales, are not civil servants). Replacement taxes (TTiiL and WLfT) are by their nature small taxes. Taking this into account with the need for WRA to be a lean body, it will be helpful to have the ability to develop institutional knowledge and build capacity through the sharing of expertise across the Welsh Government, HMRC and WRA - possibly facilitated through secondments.

⁵Non-Ministerial office holder in Scottish administration

Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Duties

2.12 The WRA will have legal responsibility for ensuring that Welsh taxes are collected efficiently and effectively with receipts being paid to the Welsh Consolidated Fund to fund public services in Wales. It will however, not necessarily be the organisation that actually does the collection and management of taxes and the Welsh Government proposes powers to make it possible to delegate to another organisation(s), to undertake these services. Details around the scope and considerations of delegation are set out later in this chapter.

2.13 In undertaking tax collection and management, either directly or through delegation to another organisation(s) to act on its behalf, the Welsh Government proposes that WRA should adhere to high standards of propriety, integrity and transparency. We propose establishing a core set of duties for WRA, which will be consistent with current UK and proposed Scottish approaches and to include:

- collect all net tax revenue due, while exercising necessary caution in cases of exceptional hardship;
- provide information, guidance and support to assist taxpayers to be compliant;
- consult/engage widely with stakeholders in advance of proposed changes to taxes;
- seek to avoid disputes, but where they occur to resolve them quickly through consensus or other means;
- establish arrangements (including with other public bodies) to identify and report any criminal activity;
- provide information and advice to the Welsh Government and/or the Assembly on tax administration and collection matters;
- meet any relevant EU and international obligations;
- have regard to Ministerial guidance; and,
- establish and maintain high professional standards.

Question 2. What are your views on the proposed core set of duties for the Welsh Revenue Authority?

LEADERSHIP AND GOVERNANCE

2.14 In considering options for the leadership and governance arrangements for WRA the Welsh Government has looked at the models used by HMRC and those proposed for Revenue Scotland. We have also looked at best practice in establishing new Welsh public bodies, including Natural Resources Wales.

Board size

2.15 The size of the WRA Board will relate directly to how tax management and administration functions are carried out. For example, if WRA undertakes functions itself then a higher number of board members would be required than if the functions were in part or wholly delegated. At this stage the Welsh Government anticipates that a board of between 6-9 members will be necessary.

Appointing a Chair, Board Members and Chief Executive Officer

2.16 The Welsh Government proposes that the Chair and Board Members of WRA should be public appointments made according to the Nolan principles on Standards in Public Life⁶ and consistent with Welsh best practice. Chair and Board appointments should be made by the Welsh Government, and the Chief Executive Officer should be appointed by the Chair in consultation with the Welsh Government.

Accountability

2.17 In common with existing established UK practice and that envisaged for Scotland where tax authorities are accountable to their respective (citizens via) Parliament, WRA will be directly accountable to the Assembly.

2.18 As part of the accountability arrangements, WRA will be required by legislation to publish details of its activities and performance. The key requirements proposed include the need for WRA to lay key documents before the Assembly:

- an annual report and accounts (having been audited by the Auditor General for Wales);

⁶ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

- an annual statement of taxes collected (having been audited by the Auditor General for Wales); and,
- a corporate plan (following its initial agreement with Welsh Ministers).

2.19 The Welsh Government will publish annual guidance to set out WRA's objectives and forward budget, which will in turn inform the development of a corporate plan for subsequent agreement with the Welsh Government before it is laid before the Assembly.

Taxpayers' information

2.20 Taxpayers' confidential information is required by WRA to enable it to undertake its functions. In providing such information taxpayers can rightly expect that it is kept confidential and it is not disclosed, unless there are clearly specified exceptional circumstances. In the UK it is an offence to disclose confidential information held by HMRC and the Welsh Government proposes that a similar offence should exist in Wales. This will help in establishing trust between WRA and Welsh taxpayers.

Maintaining standards

2.21 The Welsh Government proposes that the handling of complaints concerning WRA should be aligned to the established arrangements for public bodies in Wales and those established for HMRC:

- i) Public Service Ombudsman Wales;
- ii) Independent Police Complaints Commission – complaints concerning investigations; and,
- iii) Her Majesty's Inspectorate of Constabulary – inspect the actions and omissions of HMRC in preventing, detecting, investigating and prosecuting criminal offences.

Financial Implications

2.22 The cost of establishing and the subsequent running of WRA will be determined by the final arrangements selected for tax collection and management – see paras 2.30 to 2.34 and appendix 3 (draft Regulatory Impact Assessment). The Welsh Government is undertaking an analysis of options available, their costs and wider implications and will publish further information on this next year.

2.23 The Welsh Government anticipates that there will be costs associated with initial shadow running and calculate these to be in the region of some £200,000. This would comprise 6-month funding for a Chief Operating Officer (COO) in 2016-17 and then in 2017-18 funding for a part-time Chair, board members and a full 12-months for an COO.

Question 3. Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Taxpayers' Charter

2.24 It will be critical for WRA to establish a positive culture of payment of taxes, to promote compliance and to deter avoidance. It should seek to develop and maintain good relationships with taxpayers and their agents on an ongoing basis. To achieve this it will need to be clear in its expectations of taxpayers.

2.25 Taxpayers' Charters that set out the relationship between the taxpayer and the tax authority are widely used for example by HMRC, and are considered to be good practice. The Welsh Government proposes that WRA should publish a Taxpayers' Charter and that this should set out the rights and expectations of both the tax authority and the taxpayer in the payment of taxes.

2.26 In setting a positive cultural tone for the relationship between the taxpayer and WRA, the Charter should be developed in consultation with stakeholders and should be reviewed regularly, again in consultation with stakeholders. The Welsh Government also proposes that legislation will require WRA to report on the effectiveness of the Taxpayers' Charter, as part of its annual report.

Question 4. What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Tax collection

2.27 The Welsh Government proposes that WRA should retain ultimate legal responsibility for the effective and efficient collection and management of Welsh devolved taxes. However, WRA does not need to be the organisation that actually does the collection and management. It would be possible to delegate to another organisation to undertake these services on behalf of WRA, or indeed, for the body to build this capacity in-house.

2.28 HMRC and Revenue Scotland are structured in different ways:

- HMRC operates across the UK and collects taxes directly. Different taxes can have entirely independent collection systems;
- Revenue Scotland will be responsible for tax collection, but it is envisaged that through delegation it will make arrangements with two Scottish public bodies to collect taxes on its behalf (Registers of Scotland for Land and Buildings Transactions Tax and the Scottish Environmental Protection Agency (SEPA) for Scottish Landfill Tax).

2.29 In both these cases, tax policy remains with UK Government/Scottish Government Ministers. The independent organisation is responsible for implementing policy decisions and collecting/managing taxes in the context of the legislative framework set by the relevant Parliament.

2.30 There are implications of each of these approaches:

- HMRC, with responsibility for all UK taxes, has built a significant capacity and expertise in tax collection and management, which provides an expert service to each of the different taxes that it manages, and a critical mass to support cross-tax learning. The organisation offers a single point of contact for taxpayers across all taxes.
- Revenue Scotland, with a smaller range of responsibilities (just SDLT and LfT replacements, as Wales) is organising its operations around the customers that it serves (SEPA has an existing relationship with landfill operators, and Registers of Scotland already engages with Scottish SDLT payers through the land registration requirement). This provides a level of efficiency for customers.

2.31 There are a number of strategic issues which will inform the consideration of who will collect and manage Welsh taxes. In all cases WRA will be the corporate body which holds the legal powers of tax collection and management and will retain ultimate responsibility for the operation of these, but there are options about which organisation(s) undertake collection on its behalf.

2.32 The Welsh Government is considering a range of options for who should collect and manage Welsh taxes, including WRA (building in-house capacity) undertaking all functions. Alternatively, there are other organisations that might undertake collection through delegation on behalf of WRA: HMRC undertaking all functions (although, under the Wales Bill, any administration by HMRC of either or both devolved taxes would need to be by mutual agreement); other public bodies (for example, those with existing responsibilities that might offer a good fit - Natural Resources Wales or local authorities) taking a role, potentially in combination with WRA or HMRC; and, possibly others. Any and all of these options will provide benefits to Wales.

2.33 The Welsh Government is undertaking a full analysis to consider this issue, to look at the options available, their costs and wider implications. As a result of this and the consultations being undertaken the Welsh Government will look to reach an agreed position with a preferred provider and make an announcement prior to the publication of the bill on tax collection and management.

2.34 This decision will provide supporting information for the introduction of the Assembly Bill on tax collection and management, but it is not anticipated that the name of a preferred provider is set out in legislation. The tax collection and management legislation will instead provide for the WRA to have a power to delegate its functions to another organisation.

2.35 The Welsh Government is focused at this time on ensuring a smooth and orderly transition from UK to Welsh taxes in April 2018 and the preferred provider with responsibility to collect taxes will need to ensure this. In the medium term, following the initial transition and after three to five years of operation have elapsed the Welsh Government will return to the decision again on who might be best placed to collect Welsh taxes.

2.36 The first stage of our analysis of options is to develop a full understanding of the business processes and information requirements needed to collect and manage SDLT and LfT. The Welsh Government is working with stakeholders to analyse where there are opportunities to make the existing processes and procedures more efficient and effective, and more suited to Welsh needs and priorities. A clear understanding of this will support discussions with possible providers, and help us develop cost-estimates.

2.37 The Welsh Government will seek to keep costs as low as possible in delivering an efficient and effective approach to the collection and management of Welsh taxes. Costs are however influenced by various factors and these need to be considered when options for collection and management are being reviewed. For example:

- i) a single organisation rather than a number of organisations engaged in collection – issues of greater economies of scale;
- ii) a consistent national approach to devolved tax collection and management rather than a variable local approach;
- iii) a simple standard approach to taxes rather than one with variables (tax reliefs) determined by different circumstances – complexities adding to cost, but ensuring safeguards;
- iv) adopting the existing UK tax structure rather than developing a Welsh response to priorities;
- v) the type of system adopted for tax payment and processing – on-line processing and payment can, after an initial investment, generally be cheaper to administer than a paper-based and/or a cash-based system.

Question 5. What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6. In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

INTRODUCTION

3.1 The Welsh Revenue Authority will be established as a corporate body and will have powers for tax collection and management vested in it, in readiness for taking up its statutory function from April 2018.

3.2 Our approach to powers and functions is that where there is no policy reason to diverge from UK tax administration legislation (for example on the grounds of effectiveness or efficiency or a focus on Welsh needs) the arrangements in Wales will replicate the current UK operational processes and principles. This will provide operational consistency for cross-border business.

3.3 The Welsh Government proposes legislating to provide appropriate powers for WRA to enable it to deliver on its functions. In considering such powers, the requirements of the two new replacement Welsh taxes in development will be prioritised and the opportunity presented by powers to develop new Welsh Government taxes will also be considered. Some collection and management arrangements are generic to both future replacement Welsh taxes, and some are specific to the individual taxes and will be dependent on the arrangements for the tax itself.

3.4 The bill on tax collection and management will provide a platform for administering Welsh taxes, with the specific arrangements considered in the tax specific consultations and bills for TTiiL and WLfT. This consultation provides as much detail as possible on powers and duties and gives examples of how they might operate. As previously noted, not all the issues raised in this consultation will be taken forward in the legislation on tax collection and management.

3.5 The powers, and specifically their use, will need to be consistent with the Welsh Government's stated tax principles:

Simplicity - be simple with clear rules which seek to minimise compliance and administration costs

Where possible, powers will be consistent across the taxes administered by WRA, thus avoiding the need and cost of setting them out for each devolved tax and making the tax system simple and easy to understand.

Provide stability and certainty to taxpayers, with changes subject to proper consultation with stakeholders

Where obligations are placed on taxpayers they will be set out clearly so as to provide certainty. Having both clarity and certainty will benefit

WRA and the taxpayer by avoiding uncertainties and potentially costly disputes.

Fairness - be fair to businesses or individuals who pay taxes

The use of powers should be proportionate and be subject to clear rules and limits, especially in relation to the possibly more intrusive powers. The Welsh Government expects the use of powers such as entry to business premises, surveillance and powers of arrest to be used on rare occasions and when they are that the circumstances are clear and that appropriate safeguards and approvals for use are in place.

Support growth and jobs, which will in turn help tackle poverty

Powers and their use should not place any inappropriate burden on, or be detrimental to the rights of taxpayers.

Powers that place obligations on taxpayers

3.6 For a tax system to be effective taxpayers need to play their part. Tax arrangements therefore place obligations on taxpayers, however, in setting these it is essential that they are balanced with taxpayers' rights.

3.7 The Welsh Government proposes legislating on taxpayer obligations and aims to put in place powers that mirror well-established obligations that are in current usage. There are five key obligations, details of which are set out below:

Taxpayers should:

- i) be required to notify WRA (or delegated body working on behalf of WRA) if they have a liability to pay a devolved tax;
- ii) self-assess their tax;
- iii) pay any taxes due within any specified time period;
- iv) have tax records that contain sufficient detail to enable an accurate tax return and allow WRA to check accuracy, where appropriate; and,
- v) retain tax related records in an accessible form and for a specified minimum period of time.

Question 7. Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Powers to require taxpayer information and documentation

3.8 WRA will need to be able to gather information so that it can be used to check the accuracy of taxpayers' returns. The Welsh Government proposes adopting similar powers to those currently in place for HMRC.

Information and documentation from the taxpayer: WRA should have the power to require information and documentation from, or copies of, taxpayers' tax records. This would sit alongside the obligation on taxpayers to have and retain tax records.

Information and documentation from third parties: WRA might need access to what it believes to be relevant information on a tax return that is held by a third party, ie an agent. In these circumstances the Welsh Government proposes that WRA should have the power to require information from, or copies of, taxpayers' tax records held by third parties.

Powers to inspect

3.9 The prompt validation of tax due will provide certainty to taxpayers and minimise delay and administrative costs to both the taxpayer and WRA. In support of this the Welsh Government proposes that WRA should have relatively broad powers of inspection, consistent with those available to HMRC. These powers would relate to the inspection of records, premises and goods and materials and include the taking of samples:

Records: WRA will need to be able to inspect the supporting records of the taxpayer, and possibly their agents.

Premises: the Welsh Government considers it appropriate for WRA to be able to inspect a taxpayer's business premises to enable consideration of business records held there. Inspecting records at business premises in this way can be convenient for both WRA and the taxpayer and help to verify a taxpayer's tax return promptly.

Goods or materials and taking samples: the Welsh Government also proposes providing powers of inspection to WRA where goods or materials are relevant to a tax return or can provide a better understanding of the business and its tax position. Similarly, powers to take a sample of any goods or materials from premises where this would help determine any tax due.

3.10 An inspection could follow a request to visit and tour premises and to see any goods on open display. An inspection would not however equate to a search. Powers required to undertake a search are covered separately, later in this chapter.

Powers to correct taxpayers' tax returns

3.11 Under UK legislation, HMRC can amend tax returns in the following circumstances:

- correction of basic arithmetical errors; and,
- correction following provision of further information that enables calculation to be recalculated. This might also include recalculating on the basis of a reasoned best judgement.

3.12 The Welsh Government proposes investing powers in WRA to enable it to undertake corrections in similar circumstances. This will ensure consistency of approach with existing and developing tax authority approaches. Furthermore, as a key feature of a self-assessment tax system, the Welsh Government proposes raising powers so that WRA can accept an amended tax return submitted by a taxpayer.

Powers to investigate

3.13 Where WRA suspects that there is criminal activity, it will need powers to be able to undertake an investigation to obtain evidence (see chapter 4).

3.14 The use of such powers will be subject to appropriate safeguards. For example, the need to first obtain a search warrant from a magistrate. This would be consistent with the requirement of other public bodies with investigatory powers including HMRC with its existing tax management role.

Powers to levy penalties

3.15 To encourage tax compliance and prompt payment the Welsh Government proposes legislating to provide powers to levy an appropriate penalty regime with details of penalties being included in legislation associated with the specific taxes (see chapter 4).

Power to collect debt

3.16 Most tax that is due is paid voluntarily, on time and without the need for additional encouragement from a tax authority. There can also be occasions however when a tax debt remains outstanding and a reliance on voluntary arrangements will be insufficient. In these circumstances, WRA will need to have appropriate powers if it is to effectively meet its duty of collecting taxes.

3.17 There are two possible scenarios for an outstanding tax debt:

- i) where a taxpayer is willing to pay, but has difficulty at that time in doing so. In such circumstances, the Welsh Government will ensure that WRA has the discretion to be able to respond to assist payment being made. For example, through the establishment of a repayment schedule;

- ii) where a taxpayer is unwilling to pay. The Welsh Government proposes that WRA should have a power similar to that available to HMRC to enable it to pursue the outstanding tax debt together with related costs such as interest and penalties.

Question 8. Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Powers to delegate to other bodies

3.18 As set out in Chapter 2, WRA will retain ultimate responsibility for the effective and efficient collection and management of Welsh devolved taxes. The Welsh Government proposes investing powers in WRA to enable it to either build capacity in-house or to make arrangements with another organisation to undertake functions on its behalf such as the collection of taxes, investigation work and criminal enforcement.

3.19 Where delegation is used the details, including terms and conditions of the arrangement will need to be first agreed with the Welsh Government and then published, so as to ensure transparency. It will also be important for WRA to be able to revoke the delegation of any powers, if appropriate.

Question 9. What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

INTRODUCTION

4.1 Tax receipts fund public services, so it is essential that people pay the taxes that are due. The great majority pay the required amount in a timely way. Promoting and enabling taxpayer compliance is consistent with the principle of fairness, and will be a key priority for WRA and for any organisation that might collect and manage taxes on its behalf.

THE ROLE OF WRA IN PROMOTING AND ENCOURAGING COMPLIANCE

4.2 A key role of WRA will be to provide high-quality and timely education and guidance to taxpayers on how and when to pay tax. To ensure accessibility, tax guidance should be clear and readable and available through a variety of different channels and formats in both Welsh and English.

4.3 In supporting taxpayers to pay their taxes in a timely way, WRA will concentrate on getting the tax due right first time, and provide help to minimise the need to amend administrative errors later. This support will be available to taxpayers and their agents through a variety of channels, formats, and in Welsh and English, so as to ensure that it is accessible to all. Early intervention when possible issues arise will minimise the burden on the taxpayer, their agent, and WRA.

4.4 A priority for WRA will be to establish tax filing and payment systems (including online systems), which make the administrative process of paying taxes as simple as possible⁷. The Welsh Government will look to WRA to seek continuously to improve the experience of the taxpayer and to reduce complexity in filing and payment. This approach will also help reduce the opportunities for administrative error during the payment of tax.

4.5 Where future policy and administrative changes to the devolved taxes are proposed, WRA will consult early and comprehensively with taxpayers and their agents and use a variety of channels and formats in both Welsh and English.

4.6 A risk-based, but proportionate, approach will be taken to encourage compliance amongst taxpayers - especially where there has been a previous problem in complying. WRA will be able to develop ongoing relationships with taxpayers and their agents. It will be able to use reminders, advice and assistance and other types of communication, to proactively prevent non-compliance, where possible.

⁷ The details of possible tax payment and filing systems, guidance and support for taxpayers and agents will be provided in the consultation and legislation for a TTiL and WLfT.

4.7 It will be important for WRA to have powers to amend tax returns in circumstances where there are clear errors, which could lead to incorrect payment or other issues. This will also help to encourage compliance and reduce administrative burdens on the taxpayer, agent and WRA. Discussion of these powers is included in Chapter 3.

Question 10. What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Encouraging proactive and constructive engagement

4.8 There are a number of transactions in the current SDLT regime in particular where both taxpayer and tax authority agree that tax is due, but disagree on the amount to be paid. In these cases, WRA will offer a clear and understandable process of internal review and appeal to help resolve the issue. This process is set out in Chapter 5. In these circumstances, WRA's main focus will be to achieve early and satisfactory resolution of the issues, and a search for agreement and consensus where possible.

Deterring and discouraging non-compliance

4.9 The Welsh Government will expect WRA to do everything possible to encourage compliance and enable taxpayers to pay the right amount of tax in a timely manner. However, there will be some who deliberately do not comply with the tax regime and do not proactively engage with WRA to agree tax due.

4.10 Non-payment of taxes imposes an unfair burden on the wider community of taxpayers (in that some are paying their taxes, and some not). It reduces the revenue available to fund Welsh public services, and creates administrative burdens on WRA to chase and sanction non-compliers.

4.11 The Welsh Government understands that there are a relatively small number of cases of non-compliance in Wales on SDLT and LfT. However, it is important to have an understanding of the situations in which non-compliance arises, and have a clear process for dealing with these cases.

4.12 There are a number of different reasons for the non-payment of taxes. In particular, the structure of the tax and the context in which it is paid can give rise to different types of non-compliance: for example, LfT is associated with clear examples of tax evasion (deliberate non-payment of the tax, such as fly tipping). WRA will wish to set out an approach to dealing with

non-compliance which is appropriate to the particular tax⁸. This approach will be expected to include reminder letters, penalties, and ultimately a reference to the Courts system. There are key elements of a civil and criminal enforcement regime which are, and should remain, generic to a TTiL, Welsh Landfill Tax, and possible future devolved taxes.

Providing clarity on approach to non-compliance

4.13 The Welsh Government has a clear set of principles for how WRA will approach non-compliance. WRA will be expected to be constructive and consistent in its dealings with taxpayers and their agents, seeking to achieve resolution and bringing the taxpayer into compliance. In cases where it is clear that taxpayers or agents have not complied deliberately, WRA will be expected to clearly and firmly discourage and deal with non-compliance. It will be empowered to operate a clear, proportionate and predictable enforcement regime, which will include the use of civil penalties and ultimately engage a criminal enforcement regime if required.

CIVIL PENALTIES

4.14 Where tax due is not notified or is sent in late, HMRC will consider using civil penalty powers. There are three broad types of penalty currently in use by HMRC:

- fixed penalties (eg when SDLT is not received within 30 days of the transaction, a £100 penalty is levied);
- daily penalties (interest is calculated on a daily basis on the amount of SDLT due if it is late, additional to the fixed penalty); and,
- tax geared penalties as a proportion of the tax due (eg under-declaration of LfT may result in a penalty of 5% of the tax due).

4.15 There are also penalties for incorrect returns. Where tax is not paid on time, interest is chargeable, in addition to any penalty raised. Different types of penalty regime are used by HMRC in different circumstances for SDLT and LfT. In Scotland, similar penalties for failure to make returns or pay tax are included in the Revenue Scotland and Tax Powers Bill.

4.16 The Welsh Government proposes that WRA should have powers to levy an appropriate penalty regime. The consultations and legislation on TTiL and WLfT will set out clear details of the circumstances in which various penalties will be used, the conditions for applying them and how they are calculated (including the application of interest). WRA will be expected to consult on and publish clear guidance on the application of penalties and the process for applying them.

⁸ The specific approach to non-compliance will be set out in the consultations and legislation on a Tax on Transactions involving interests in Land and a Welsh Landfill Tax.

Question 11. Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12. Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

CRIMINAL ENFORCEMENT

4.17 HMRC and the proposed Scottish tax regimes are designed to support taxpayer compliance and in the majority of cases such arrangements work. There are occasions, however, when additional arrangements are necessary and civil and criminal enforcement regimes have been established to encourage further compliance.

4.18 The majority of enforcement action by HMRC is via a civil penalty regime, details of which are discussed earlier in this chapter. In the case of criminal enforcement, powers are reserved for the most serious, complex and high-value cases of which there are relatively few.

4.19 Criminal offences relating to tax are currently defined in legislation as follows:

- cheating the public revenue – fraudulent conduct that deprives HMRC of income through either positive false representations or concealment or omission to disclose liability or income (applies to offences committed in England and Wales only);
- concealing etc. - concealment, destruction or disposal of a document following HMRC notification that the document is subject to an information notice; and,
- fraud offences – these are not specific to the tax system and apply generally to any fraudulent criminal behaviour. As such, they do not require any specific provision for them to be introduced into the tax system.

4.20 Only a small number of criminal offences have been prosecuted in England and Wales in recent years. In the last 12 months, there have not been any criminal investigations in relation to either SDLT or LfT⁹ in Wales.

4.21 The lack of recent criminal investigations in Wales does not however negate the need to establish an arrangement here for criminal enforcement should the need arise. Successful enforcement could ultimately benefit citizens in Wales, where unpaid taxes are recovered for public service use. As such the Welsh Government proposes establishing arrangements that are consistent with existing UK arrangements, support compliance and acts as a strong deterrent to anyone contemplating tax evasion.

4.22 Adopting a consistent approach to criminal enforcement will help provide clarity and in the circumstances, the Welsh Government proposes that legislation should set out details of criminal offences along the lines of that in UK legislation.

4.23 In furtherance of its criminal enforcement regime, HMRC draws powers to investigate from the Police and Criminal Evidence Act 1984. As such, HMRC officers can apply for a warrant from a magistrate to enter and search premises for the purposes of arresting a person; searching premises; seizing and retaining items; and, detaining a person in custody.

4.24 The Scottish Government has agreed with Police Scotland that they will investigate suspected tax fraud within their existing powers, as opposed to RS undertaking the investigation of criminal activity.

4.25 Our proposed approach to criminal enforcement in Wales is to follow arrangements similar to those in use currently in the UK. The Welsh Government proposes conferring powers on WRA to investigate specific criminal tax offences; however, consideration will also be given to whether the use of these powers might be exercised directly by WRA or by delegating the exercise of powers to another body that already has expertise and capacity to undertake the function, who would act as WRA's agents.

PUBLIC SAFEGUARDS

4.26 With the provision of powers to undertake criminal investigation and enforcement is the need to have safeguard arrangements to ensure that such powers are used appropriately and in the case of investigation, used by individuals who have first received specific training.

4.27 Existing safeguard arrangements are in place with independent bodies to consider aspects of tax administration undertaken by HMRC. The Independent Police Complaints Commission (IPCC) is responsible for

⁹

http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140224/text/140224w0001.htm#140224w0001.htm_wqn83

considering appeals made by members of the public in relation to serious complaints against HMRC staff in England and Wales. It has powers to overturn certain HMRC decisions. Her Majesty's Inspectorate of Constabulary (HMIC) is empowered to inspect the actions and omissions of HMRC in preventing, detecting, investigating and prosecuting criminal offences. The Welsh Government proposes putting in place arrangements similar to those that exist currently across the UK.

Prosecution of tax offences in Wales

4.28 The Crown Prosecution Service (CPS) is required to institute proceedings arising out of criminal investigations, including those undertaken by the police and HMRC. New arrangements for the prosecution of tax offences in Wales will need to be made with the introduction of Welsh taxes and therefore the Welsh Government is considering options for taking this forward, including the continued involvement of CPS.

Question 13. What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

INTRODUCTION

5.1 The large majority of people pay the appropriate amount of tax due in a timely way. There is a minority of people who deliberately evade paying tax, which is illegal. There is also a third group of people who use various different legal structures and opportunities to reduce their tax bill. Legislation (primary and secondary) defines what and when taxes are due. Tax planning within this legislative framework may in many cases be considered acceptable to taxpayers and agents in that it helps to relieve the tax burden.

5.2 Tax avoidance, conversely, is often defined as applying legislation in a way that was not intended to gain a tax advantage. It is often characterised by the use of artificial transactions that have little or no other purpose than to produce a tax advantage. Tax avoidance: gives people an unfair advantage over those who pay the fair amount of tax; reduces the amount of money available to fund public services; undermines confidence in the coherence of the tax system; and, can cause reputational damage to the tax adviser profession.

5.3 Avoidance is a particularly relevant concern to SDLT (and other UK taxes including income tax, capital gains tax, inheritance tax and corporation tax), where there have been a number of cases of avoidance over recent years across the UK. The large majority of taxpayer agents and advisers are reputable and provide high quality and robust advice to taxpayers on the most appropriate and legally-acceptable way of organising their tax affairs to stay well within the legislative framework. However, there are some advisers or agents who do not adhere to the legislative framework, and promote schemes which may have artificial elements designed to deliver a tax advantage.

5.4 A clear mandate will be given to WRA to deal with any tax avoidance in relation to a TTiiL and possible future devolved Welsh taxes. It will work closely with reputable tax advisers and agents who operate legally and support their efforts to work within the legislation.

Actions to address tax avoidance

5.5 Clarity about the intentions of legislation: the distinction between tax planning and tax avoidance often appears to be defined by ‘intention’ of the legislature when passing the legislation. The Welsh Government will provide clear supporting documentation in the Explanatory Memorandum and Explanatory Notes alongside the legislation, and in particular in considering the issue of avoidance.

5.6 Similarly, WRA will be expected to provide clear and coherent guidance on the definition and approach to avoidance, consistent with the legislation. This will include practical examples of what is considered to be

avoidance, and what is considered to be appropriate planning. The Welsh Government will expect WRA to be clear throughout communications and engagement that tax avoidance will not be tolerated and swift and decisive action will be taken to address potential avoidance schemes.

Learning about and understanding cases of possible avoidance

5.7 HMRC has introduced legislation to require taxpayers and their agents or advisers to notify HMRC of any possible tax avoidance scheme (the Disclosure of Tax Avoidance Schemes, or DOTAS). These regulations have been amended a number of times in UK legislation.

5.8 Disclosure of a scheme under DOTAS does not mean that the tax avoidance proposal is acceptable; it only means that the promoter or user has complied with their legal obligations to disclose. Those who do not disclose use or promotion of these schemes face significant penalties (an initial penalty of up to £5,000 and then daily penalties of up to £600 per day).

5.9 The benefit of the disclosure rules is that HMRC are aware of avoidance schemes early and can, if necessary, put in place counteracting measures very promptly; they also have a deterrence effect as it means that tax avoidance scheme users are more likely to be detected.

5.10 It will be important that WRA has arrangements in place to know early on about possible tax avoidance schemes, so that it can take swift action to close them down. There are a number of ways in which WRA might learn of tax avoidance schemes operating in relation to a TTiiL in Wales, including through good relationships with taxpayer agents and advisers in Wales, and with HMRC.

5.11 There is a risk that some tax avoidance schemes may not reach the notice of WRA for a while after they are established. The time taken to learn of the scheme and then pass appropriate legislation to close any unintended “loophole” may allow a number of avoidance scheme transactions to take place, with concomitant impact on tax revenue.

5.12 It would seem more cost-effective to find ways of learning about potential tax avoidance schemes early in their development. There would appear to be good reasons for a disclosure regime in Wales to relate to a TTiiL, and to apply more widely to any future devolved Welsh taxes as a key tool for the tax collection and management regime.

5.13 The HMRC’s DOTAS regime is highly detailed and complex, but now widely recognised and well-understood by agents and advisers across the UK. Taxpayers and their agents have highlighted the benefits of not changing operational procedures unless there are opportunities for efficiency, effectiveness and better suiting to Welsh needs. A disclosure regime would seem an area where retaining consistency with the UK regime would provide

potential benefits through the avoidance of creating significant new administrative burdens in learning a new system.

5.14 The UK DOTAS rules have been altered a number of times, and with continued adjustments in the UK, there is a chance that there would be times when there are different highly detailed disclosure rules in England and Wales. The Welsh Government would be interested in consultees' views on the following questions:

Question 14. Should Wales establish a specific tax disclosure regime for devolved taxes?

Question 15. What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16. Are there any options, other than a tax disclosure regime, that might be considered to help to alert the Welsh Revenue Authority of possible tax avoidance schemes?

Taking action to close down tax avoidance schemes

5.15 The Welsh Government aims to make tax legislation as specific as possible. However, it seems clear from UK experience that there are disreputable tax agents and advisers who will seek to develop opportunities to gain a tax advantage from exploiting the legislation. If such circumstances arise, the Welsh Government will look to bring forward legislation to close down these opportunities as they become known.

5.16 This is both practical in that it will prevent tax avoidance schemes from taking hold, but also more fundamental in that it will demonstrate Welsh Ministers' commitment to act on tax avoidance swiftly. Any legislation would currently need to form part of the Welsh Government's legislative programme because, unlike the UK Government, there is no current provision in Wales for an annual Finance Bill to make changes to the tax system.

5.17 There are a number of changes that the UK Government has made to the SDLT legislation over the course of recent years to outlaw specific tax avoidance schemes, and make the legislative position clear on the remit and scope of the tax. These Targeted Anti-Avoidance Rules will be considered in

the context of the consultation and legislation on a Tax on Transactions involving interests in Land.

Setting out a legislative position on tax avoidance and abuse

5.18 The Welsh Government recognises that it can take time for the current legislative process to close down tax avoidance schemes. The UK Government and Scottish Government have both also recognised this, and have proposed a wider legislative approach to tax avoidance/abuse. This legislative ‘rule’ sets out a more principled set of criteria for tax avoidance than that within the specific tax legislation, and confirm that the gaining of a tax advantage under a particular set of circumstances will be considered outwith the legislation.

5.19 The UK Government’s rule is entitled the ‘General Anti-Abuse Rule’; the Scottish Government’s rule is entitled the ‘General Anti-Avoidance Rule’ (both GAAR). The UK rule applies to inheritance tax, income tax, National Insurance contributions, capital gains tax, corporation tax, petroleum revenue tax and SDLT. The GAARs provide the tax authorities with the opportunity to counteract the tax advantage of “artificial” avoidance arrangements, on the grounds of the principles of tax avoidance, and as defined by respective legislation. This does not require the relevant Government to bring forward legislation to close down specific schemes. The UK GAAR has been in place since July 2013, and has yet to be tested.

5.20 The Welsh Government is clear that tax avoidance is unacceptable and will not be tolerated, for the sake of fairness as well as loss of revenue to fund public services. The principle of a GAAR is well-established. The Welsh Government is also clear that certainty is a key principle for the operation of Welsh devolved taxes, and that devolved taxes should support businesses and economic growth. A Welsh GAAR should not be perceived to create uncertainty for businesses. The UK GAAR has specifically and deliberately sought to provide safeguards for businesses in its application, including:

- a. use of the word ‘abuse’ in its title, rather than ‘avoidance’ in the Scottish approach, and an emphasis on only applying to the more extreme cases of avoidance;
- b. the establishment of a non-remunerated professional independent Advisory Panel, to advise HMRC on whether particular situations are instances of tax abuse.

5.21 If establishing a GAAR in legislation, the Welsh Government would be mindful that Welsh taxpayers are already working within the framework of the UK approach to avoidance on all other taxes, and that this has been widely consulted on at UK level. The Scottish Government’s approach, though as yet untested, sets what they consider to be a robust position against tax avoidance to deter it from happening.

5.22 The Welsh Government would be interested in your views on the following issues:

Question 17. Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18. Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19. How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20. Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

INTRODUCTION

6.1 This chapter sets out our proposals for managing and resolving any disputes that may arise between the taxpayer and WRA during the administration of taxes. Disputes might arise as a result of different opinions on matters such as the amount of tax due or the timing of when tax should be paid. In these circumstances it is important that there are arrangements in place that can help resolve matters fairly and swiftly.

BACKGROUND

6.2 Taxpayers have the right currently to appeal a decision by HMRC on various matters including: the tax they are required to pay; and, the payment of the tax whilst it is under dispute (for example, on the grounds of hardship).

6.3 Taxpayers can informally discuss any such areas of disagreement and seek to resolve them quickly. Failing this, a taxpayer can challenge the decision through an internal review process or through a referral to the tax tribunal, or both. The Ministry of Justice (MoJ) operates a tax tribunal system for appeals in England, Scotland and Wales.

6.4 Wales-based information on appeals relating to SDLT and LfT is not readily available, but anecdotal and some statistical evidence suggests that the number of appeals in Wales is low. Furthermore, there are no identified appeals in relation to Wales which have been referred to the tribunal system.

6.5 Existing arrangements in place with HMRC mean that when a taxpayer lodges an appeal, it initially goes through a mechanism designed to resolve matters quickly so that it does not develop into a dispute that requires resolution by a tribunal.

6.6 Early resolution mechanisms can include the following stages:

- Informal discussion - provides an early opportunity to discuss informally any issues directly with the decision-maker to try and resolve them;
- Internal Review – a taxpayer can request that an independent official re-considers the decision and in so doing, take account of any new information that has become available;
- Alternative Dispute Resolution – involvement of an independent third party to help resolve a dispute.

6.7 Alternative Dispute Resolution (ADR) can take different forms including:

Arbitration which uses a neutral arbitrator to make a decision about the outcome of the dispute. Once the parties have agreed to the process, arbitration is binding (the decision is final and can be appealed only on very narrow grounds).

Mediation which uses a neutral mediator to help the parties discuss and find a mutually acceptable solution. This approach is used by HMRC and in recent years it has also been adopted by the tax administrations in Australia, New Zealand and Canada.

Early neutral evaluation (also known as mutual valuation/non-binding neutral evaluation) that involves referring a dispute to an expert, usually a judge, who provides a balanced and unbiased view on the dispute and the likely outcome if it were to progress to a tribunal hearing. This MoJ has previously piloted the approach in the Social Security and Child Support (SSCS) Tribunal.

6.8 The adoption of an ADR approach can result in a dispute being less time consuming and resource intensive than going to a tribunal¹⁰; with taxpayers not having to go through the stress and formality of a tribunal hearing. It also saves money for both the taxpayer and HMRC when compared to the costs of court proceedings. The cost of external facilitation is generally split between the taxpayer and HMRC.

6.9 The approach may be helpful in resolving long-running disputes where positions on both sides have become entrenched, or progress has stalled. For example, ADR could:

- narrow down the areas of disagreement in one or more component parts of a dispute by clarifying technical issues;
- identify points of difference whilst maintaining or creating good working relationships between the parties;
- unlock provision of further information or assist parties to agree key facts;
- clarify the key questions which need to be answered in order to resolve the dispute (i.e. agreeing a decision tree); or
- narrow the particular points in a dispute and even if settlement is not reached this will help in preparing for litigation.

¹⁰ An HMRC report on the Pilot of use of ADR in complex cases 2013 found that for those cases which were resolved in ADR, the average elapsed time was 24 weeks from application to resolution. In comparison, the average time elapsed from making an appeal to the Tribunal Service and having that appeal heard was around 70 weeks.

6.10 Although ADR has not been used widely to date to resolve LfT and SDLT disputes (there have been no recent cases), the approach can in appropriate circumstances be cost-effective, consensual and offer a speedy means of supporting the resolution of tax disputes.

Avoiding disputes and seeking early resolution

6.11 The Welsh Government's tax principles will shape the approach to appeals arrangements in Wales. In particular, these will be established to be fair, simple, transparent, efficient and affordable.

6.12 The Welsh Government will articulate the key aspects of how the appeals process will work in the tax collection and management legislation. In terms of defining appealable decisions this will require further exploration with stakeholders and is likely to differ for each tax (as it currently does in UK legislation) and, as such, the details of each appealable decision area will be specified within tax specific legislation. Appealable decisions are nevertheless likely to include the following. A decision which affects:

- whether a person is chargeable;
- the amount of tax to which a person is chargeable;
- the amount of tax a person is required to pay;
- the application of penalties;
- the date by which any amount by way of tax must be paid; and,
- whether an information notice or investigatory power is used

6.13 One of our key policy objectives will be to try and avoid disputes arising in the first place. The Welsh Government will expect WRA to work on the basis of getting it right first time and fostering a culture of collaboration with taxpayers to resolve disputes where they do arise. In achieving this, WRA will need to support taxpayers by putting in place clear and accessible guidance and processes. This will include arrangements that provide unambiguous and timely explanations of decisions.

6.14 It will not always be possible to avoid a dispute and therefore the Welsh Government proposes that legislation should, in the interests of fairness and transparency, give taxpayers the right to appeal a decision made by WRA. A key principle will be to seek a non-confrontational solution when a dispute does arise.

6.15 We propose establishing an early stage process of appeals similar to that currently used by HMRC, which includes stages for informal discussion, internal review and a mediation approach to ADR. This would include adopting the practice that each party (the taxpayer and WRA) should share the costs of ADR, but subject to agreement beforehand.

6.16 In considering ADR the Welsh Government will look at the various approaches available including the favoured mediation approach adopted by HMRC, but also arbitration and early neutral evaluation as outlined above in paragraph 6.7.

Question 21. Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22. Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23. Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?

The role of a Tribunal in resolving a dispute

6.17 If a tax dispute is not resolved through an HMRC internal appeals process a taxpayer may refer the matter to be determined within the MoJ's tribunal system.

6.18 The tribunal system comprises the First Tier Tribunal (FTT) (of which the Tax Chamber is a part) and the Upper Tribunal (UT) (of which the Tax and Chancery Chamber is a part). The FTT/UT system operates on a UK or England and Wales basis for some matters including taxation. In relation to tax, the FTT hears most appeals against final decisions of HMRC, although certain appeals or challenges can be made directly to the UT. Appeals against FTT decisions are made to the UT (and from UT appeals are generally made to the Court of Appeal). The High Court has a power to transfer judicial review cases to the UT.

6.19 Wales does not have its own judicial system so in considering arrangements for appeals that might be put in place, consideration needs to be given to the requirement to link them to the existing England/Wales judicial system at some point in the appeals process.

6.20 Consideration has been given to three possible options in providing a tax tribunal arrangement for Wales: i) establishing a new Wales tax tribunal; ii) develop an existing Welsh tribunal to take on the function; and, iii) continue to use the existing MoJ administered two-tier tax tribunal system, with the possibility of introducing additional Welsh-specific elements.

6.21 Establishing a new Wales tax tribunal. The low level of Welsh appeals arising from SDLT and LfT to date suggests that there could be very few cases for a new tribunal to hear and brings in to doubt whether the expense of establishing a tribunal with requisite tax experience could be justified and represent value-for-money.

6.22 Develop an existing Welsh tribunal. Wales already has several existing devolved tribunals such as the Residential Property Tribunal and therefore the scope to possibly expand the role of one or more of these to include tax has been considered. Given the very different nature of the proposed new taxes for Wales and the specialist tax expertise required to hear these, it seems unlikely that the new tax function could be absorbed easily within an existing tribunal - at least in the short-term. Doing so could also cause confusion and inconsistency as the tribunal arrangements for non-devolved taxes would continue to be those administered by MoJ.

6.23 Continue to use the existing MoJ administered two-tier tax tribunal system. This approach has merit in terms of consistency and coherency and would have the benefit of limited change for taxpayers. The arrangements already have the benefit of having access to tax expertise.

6.24 Having considered the three options the Welsh Government proposes, at least in the interim, to use the existing MoJ administered two-tier tax tribunal system as this will meet immediate needs. In using the MoJ system, the Welsh Government will nevertheless explore possible opportunities to further enhance and respond to Welsh-specific circumstances. Any arrangement would be underpinned by a Memorandum of Understanding. Furthermore, with the development of tax expertise in Wales the Welsh Government will look again at the arrangements in due course to consider the scope to possibly repatriate the function to a Wales tribunal system.

Question 24. Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

The timing of the payment of tax when a dispute arises

6.25 Under current UK arrangements, taxpayers disputing a tax decision can in certain circumstances apply to postpone the payment of the tax until the dispute is resolved. Postponement has been possible for direct taxes such as SDLT, whereas in the case of indirect taxes such as LfT, a financial hardship test is applied in order to determine whether an upfront payment should be made.

6.26 The opportunity to postpone the payment of tax has been widely used and there are anecdotal reports that it has been used to avoid paying tax. This has been costly in terms of both additional administration requirements and lost revenue available for public services. In the circumstances, HMRC is introducing ‘accelerated (upfront) payment’ as a measure to address the issue. This approach is being adopted where there is a Disclosure of Tax Avoidance Schemes (DOTAS) or where arrangements are not considered reasonable by the General Anti-Abuse Rule (GAAR) panel and is expected to impact on high net-worth individuals.

6.27 The Welsh Government is considering the possible adoption of a “pay first” principle for devolved Welsh taxes, whereby taxes calculated due should be paid first, including in circumstances where an appeal has been lodged and its outcome is not known. This would avoid there being any presumption that the payment of taxes could be deferred automatically as a consequence of making an appeal.

6.28 If such an approach were adopted it would be on the basis that it would be balanced with fairness, access to justice and be receptive to genuine hardship. For example, if an appeal was successful then there would be reimbursement of tax paid, including interest. In the event that WRA and the taxpayer were unable to agree on an application to postpone the payment of tax, there should be scope to refer the matter to an independent arbitrator – most likely the tax tribunal.

Question 25. What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Appendix 1: Consultation response form, including summary of consultation questions

Welsh Government

Consultation on: Collection and management of devolved taxes in Wales (Number: WG22945)

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation (if responding on behalf of that organisation):

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority/Awdurdod Cyllid Cymru

Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes

No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

No

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

No

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Question 25. What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Publication of responses

Responses to consultations may be made public - on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

Returning this form

The closing date for replies is **15 December 2014**.

Please send this completed form to us by post to:

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales

Appendix 2: Glossary of terms

ADR	Alternative Dispute Resolution
COO	Chief Operating Officer
DEL	Departmental expenditure limit
DOTAS	Disclosure of Tax Avoidance Schemes
FTT	First Tier Tribunal
GAAR	General Anti-avoidance Rule/General Anti-abuse Rule
HMRC	Her Majesty's Revenue and Customs
LfT	Landfill Tax
MoJ	Ministry of Justice
NDR	Non-domestic rates
RS	Revenue Scotland
SDLT	Stamp Duty Land Tax
SEPA	Scottish Environmental Protection Agency
TTiIL	Tax on Transactions involving interests in Land
UT	Upper Tribunal
WLfT	Welsh Landfill Tax
WRA	Welsh Revenue Authority

Appendix 3: Draft Regulatory Impact Assessment

REGULATORY IMPACT ASSESSMENT

Options

Background

1. In November 2013, the UK Government confirmed their broad acceptance of the recommendations of the first part of the UK Government's Silk Commission, and introduced the Wales Bill to Parliament in March 2014. The Wales Bill is now making its way through the UK Parliament and, as well as providing the ability to borrow to fund investment, will enable the Assembly to legislate for a replacement to Stamp Duty Land Tax and Landfill Tax. If the Wales Bill is passed broadly as it stands, these taxes will cease to operate in Wales from April 2018.
2. The Regulatory Impact Assessment associated with the tax collection and management legislation will consider the likely impact of establishing a tax collection and management regime on taxpayers and their agents. It will also set out likely costs to the Welsh Government of collecting and managing Welsh taxes.
3. The later legislation bringing forward a Welsh TTiiL and WLfT will consider the various options for rates, thresholds, exceptions and exemptions which will influence the administrative requirements and revenue raised, and thus regulatory impact assessment, for these taxes themselves. Separate consultations on these will be published in spring 2015. The tax collection and management Regulatory Impact Assessment does not look at the specifics of these taxes.

Impact of establishing a tax collection and management regime on Welsh taxpayers and their agents

4. The Wales Bill requires the National Assembly for Wales to bring forward separate legislation on tax collection and management in Wales, to enable it to administer the devolved taxes. The legislation in Wales is likely to differ from the existing UK legislation in some form at least. The administrative regime is also likely to differ at least slightly.
5. Consultees have been invited to comment on proposals for a new tax administrative regime (Chapter 2). This might be an improvement on the existing UK regime resulting in a lesser administrative burden in due course, but initially requiring some administrative change. As such, the Welsh Government anticipates that there will be some cost of change of learning the new system for businesses in Wales in the short-term.

6. This will be important for a longer period for those businesses that operate across the England and Wales border, in that they will be required to learn and operate two different tax collection and management systems on a specific tax.
7. Similarly, Welsh taxpayers (of TTiL and WLfT) will continue to be UK taxpayers for all other taxes. The possible need to communicate with different organisations on different taxes may create a small administrative burden.

Likely costs to the Welsh Government of collecting and managing Welsh taxes

8. The work on who might collect and manage Welsh devolved taxes is currently being undertaken at a detailed level, and Ministers will be in a position to make a decision in early 2015. Chapter 2 provides details of possible cost drivers for this and Question 5 asks for views on the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why.
9. No decision has been taken on the locational or wider administrative structure of the body as this decision depends in part on the decision on who might collect and manage Welsh taxes, which is part of the consultation. As such, other than the very high level estimates of known costs, there are few cost analyses or comparisons available.
10. There are costs associated with setting up the corporate body. The body will be a Non-Ministerial Department with a Board, a non-executive Chair, and a Chief Executive. It is estimated that the ongoing costs for these after “go-live” in April 2018 will be around £140k per annum. The body should be established in good time before the “go live” date for Welsh taxes in April 2018. There will be a period of shadow-running with an interim Chief Operating Officer appointed in September 2016 and a Chair appointed in April 2017. It is estimated that staff costs in the 18 months prior to “go-live”, would be approximately £200k.
11. A key focus at this consultation stage is to develop a clear understanding of the preferred business processes and information requirements for collecting and managing Welsh taxes in order to assess which organisation(s) might be best-placed to undertake this work and at what cost. There are a number of options being considered including using a single organisation to collect and manage the taxes, using multiple organisations or placing the responsibility for collecting and managing taxes on the corporate body itself. Further work will be undertaken prior to the introduction of the Bill to determine the relative costs and benefits of the different approaches and a final RIA will be published alongside the Bill.

12. It is important to note that none of the options will avoid the need for IT of some sort, and the IT costs will emerge more clearly when the consultation responses are analysed and a decision is taken on the operational model for the new body - and specifically who will collect and manage devolved taxes.

Using a single organisation to collect and manage

13. If this route was chosen, the corporate body would delegate the collection and management of devolved taxes to a single organisation. It is expected that there would be a fee payable for the collection of taxes associated with this option, although there are no cost indications available at the time of writing.
14. With this choice of a single organisation providing an end-to-end service, there are reduced employee resource requirements for the corporate body and the contract management nature of the body's operational function will influence the structure of those resources. With this choice, the corporate body is anticipated to be relatively small.
15. There are choices here for the corporate body around the detail to which it becomes involved in the tax collection process. For example, the body could receive anonymised management information on tax income from the collection organisation and therefore have no need to handle sensitive taxpayer information.
16. Alternatively, if one of the functions of the body is to produce extensive data analyses and forecasting to WG, part of the arrangement with the collection organisation could be to receive full datasets of tax activity. In addition to the structure of the body, this raises a question around secure data sharing and storage, which has to be considered when deciding how the IT infrastructure for the corporate body is designed.

Using multiple organisations to collect and manage

17. For this choice, the corporate body would delegate the collection and management of devolved taxes to a number of organisations.
18. As with using a single organisation, the delegated tax collection organisations could manage the collection process and provide the body with appropriate management information, again avoiding the need to handle sensitive taxpayer information.
19. Alternatively, the corporate body could have a much more involved role as described above, where the collection organisations provide detailed data to the body. Also as above, this is dependent on the role and function of the body.

20. Similarly with using a single organisation, it is expected that the corporate body would pay a fee to the collection organisations, although at this early stage there are no cost indications available.
21. This choice offers a range of variables for the provision of a tax collection service. Consequently, employee resources and their specific IT requirements are difficult to judge without further detail. However, using and therefore having oversight of multiple organisations implies the body has an increased involvement in the overall collection process and is therefore likely to require a greater employee resource.

Retaining tax collection and management wholly within the corporate body

22. Finally, there is a choice where the corporate body itself manages the end-to-end process of tax collection and management. It would be responsible for the collection and storage of taxpayer data and would need to manage directly the relationships with taxpayers, data users (e.g. HMRC), appeals and enforcement organisations (e.g. Tribunals, Ministry of Justice, Crown Prosecution Service).
23. There would be no external fees for the collection of taxes associated with this choice, but there is a cost to manage the operation of tax collection, management, appeals, enforcement, forecasting etc. Therefore, to ensure the effective delivery of each function the body would be significantly larger than in other possible collection and management choices.
24. In remaining flexible about which organisation(s) might collect and manage Welsh taxes and consulting on the principles around that in this White Paper, it should be noted that costs are not fixed and firm at this point in time. Also, costs are likely to change between now and the implementation date of 2018 and as such, it is too early to determine the exact costs of implementing a tax collection and management regime in Wales from 2018.

Impact Assessments

25. A series of impact assessments on the policy relating to the Bill were undertaken as part of this Regulatory Impact Assessment.
26. Overall, the establishment of a corporate body that exercises tax collecting powers for TTiiL and WLfT is not expected to have a major impact on most businesses or people. While there may possibly be some variations in the structure of the taxes themselves, the requirement to pay those taxes exists now and the requirement will still exist when the taxes are devolved to Wales.

27. Details of the TTiiL and WLfT will be in the tax specific legislation – this Bill is only concerned with the power to collect and manage devolved taxes and establishing the legal means of doing so. There may be some changes to the taxes, but the Minister for Finance and Government Business has indicated that changes will be to improve on what exists currently and, where beneficial, to give a Welsh ‘feel’ to the taxes.

Impact on small business

28. The majority of businesses that will have to be directly involved with TTiiL are professional firms such as solicitors paying the tax on behalf of their clients. This would not be a change from the existing situation, but the operation of TTiiL may be slightly different from the existing SDLT and some businesses may feel that there is an increased administrative burden for their staff to deal with more than one means of paying a tax. By April 2018 when the devolved taxes become live, this will already be the case with different Scottish taxes, but there is less of an impact due to less cross-border activity.
29. It is uncertain at the present time whether the operation of WLfT will have an impact on the landfill operators. The existing LfT is collected manually – if this continues under a new corporate body, there would be a minimal impact. If the decision were taken to digitise the collection of WLfT, there would be an impact on landfill businesses as there would be a change of business process for them to integrate. However, landfill stakeholders were consulted and have advised the WG that the rest of their business activities are managed digitally and a change to a digital reporting/collecting regime would be welcomed.

Impact on voluntary sector

30. The Welsh Government does not expect that charity organisations will be impacted by this Bill. A potential impact may occur at a later date when TTiiL and WLfT are designed and the tax specific legislation is introduced, but potential changes to the actual method of collection of TTiiL and WLfT are not expected to create any additional burden on the voluntary sector.

Equality impact assessment

31. The Human Rights Act (1998), which partially incorporates the European Convention on Human Rights (ECHR), has been considered in this equality impact assessment.
32. The Government of Wales Act states that a Bill will not be within the legislative competence of the National Assembly for Wales if it is incompatible with the ECHR and could not become law (section 108(6) (c) GOWA 2006).

33. The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are relevant for the purposes of this Bill are:
- Article 1 of the First Protocol which protects the right to property.
 - Article 6 which guarantees the right to a fair trial in the determination of civil obligations and affords further rights where a person is charged with a criminal offence.
 - Article 14 which prohibits discrimination.
34. Article 8 which requires respect for private and family life.
35. The compatibility of the Bill with the ECHR (including the Articles above) will be considered during the passage of the legislation.
36. In considering if there is any differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity, Civil Partnerships and Race, the Welsh Government has determined that there is no evidence to indicate a differential impact to any of the protected groups.

Privacy Impact Assessment

37. A Privacy Impact Assessment screening has been completed and the Information Rights Unit has confirmed that a full Privacy Impact Assessment is not required at this stage.

Rights of the child impact assessment

38. Having explored the Articles, the Project team has concluded that there are no child-affecting matters in this legislation.

Rural proofing checklist

39. The Rural Proofing Checklist assesses whether the Bill causes a significant detrimental impact on the rural community.

The table below summarises the rural proofing checklist results:

	Policy Question	Yes	No	Comment
1.	Will your policy affect the availability of other public and private services in the rural area?		No	
2.	Could you deliver the policy you are proposing to implement through existing service outlets? E.g. schools, banks and GP surgeries	Yes		The operational delivery model of this policy will be informed by this consultation, but some of the options include using existing public sector organisations.

3.	Will there be an extra cost to delivering your policy to rural areas?		No	
4.	Will the policy affect travel needs or the ease and cost of travel for rural communities?		No	
5.	Does the policy rely on communicating information to clients?		No	
6.	Will the policy be delivered through the private sector or through a public-private partnership?			This question cannot be answered at this time as the decision on who collects and manages devolved taxes is part of this consultation.
7.	Does the policy rely on infrastructure for delivery that may put rural communities at a disadvantage? E.g. Broadband ICT, main roads and utilities		No	
8.	Will the policy impact on rural businesses particularly the self employed and micro businesses and on the Third Sector including social enterprises and local voluntary organisations?		No	
9.	Will the policy have a particular impact on land based industries and therefore on rural economies and the environment?		No	
10.	Will the policy affect those on low wages or in part-time or seasonal employment?		No	
11.	Will the policy target disadvantaged people living in rural areas?		No	
12.	Will the policy rely on local organisations for delivery?		No	
13.	Does the policy depend on a new building or development site?		No	
14.	Will the policy impact on the quality and character of the natural and built rural landscape?		No	
15.	Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment?		No	

Impact on Welsh Language

40. There is no risk that the Bill will have a negative impact on the Welsh Language.

Competition Assessment

41. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition.
42. The table below summarises the competition filter results.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

43. In view of the answers above, the second stage of the competition assessment is not required.

Post implementation review

44. It is anticipated that this legislation would be reviewed two years from the date of Royal Assent or sooner if the need arises.